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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **MAC.APP. 567/2019 & CM APPL. 23556/2019, 23557/2019 & 23558/2019**

SAIF ALI & ORS

..... Appellants

Through: Mr. Javed Khan, Adv.

versus

RAMA DEVI

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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25.07.2019

It is the appellants' case that the award of compensation against them is erroneous both in law and fact because it has not been established that his vehicle was involved in the accident. Indeed, as per the Mechanical Inspection Report, no fresh damages were found on the front side of the TSR and no blood stain was found on the front side of the body of the vehicle either. Furthermore, the injured was crossing not from the zebra-crossing but from an unmarked portion in the middle of the road and he was injured in some other accident. As a good Samaritan, the appellant picked him up from the site and took him to the hospital and remained there till the police came. He submits that the appellant has been singled out for his good deed.

It is also the appellants' case that their counsel did not cross-examine P1. Cross-examination had been closed on the ground that the main counsel for the appellant was not available and compromise talks could (shall) be



done. Ms. Rama Devi (P1) was not cross-examined despite an opportunity being given to the appellants. It is the latter's case that their counsel had not carried out his professional duty diligently as was expected of him. Furthermore, he had no instructions apropos any compromise talks. Therefore his submission in this regard was without authority. It is contended that the counsel could have well sought the cross-examination to be deferred. However, he neither informed the appellants nor discharged his duty as entrusted to him.

The Court would note that the proxy counsel for respondent nos. 1 & 2 i.e. the present appellants did not cross-examine P1 despite an opportunity being given, on the ground that the main counsel was not available and compromise talks "shall be" done. The appellant has issued a notice to his erstwhile counsel stating inter alia as under:

"..... We, the undersigned appointed you as our counsel to defend us in DAR No. 210/2018 titled as "RAMA DEVI VS SAIF ALI AND OTHERS" before the Court of Shri G.N. Pandey, Judge MACT Pilot Court, Karkardooma, Delhi.

We were not aware about the court proceedings but you being our counsel neither cross-examined PW-1 (Rama Devi, W/o Late Bhagwati Singh) nor lead any evidence on our behalf and even did not put-up our defence disclosed in written statement to any witness. In short you have not provided legal/ profession services to us as warranted under the Advocate Act, due to which award dated 14.09.2018 passed against us for an amount of Rs. 3,61,720/- to be paid to the petitioner in the said DAR.

Hence, you are required to pay the said awarded amount of Rs. 3,61,720/- within SEVEN days from the date of receipt of this notice, failing which we shall be constrained to initiate legal proceedings against you before the Bar Council of Delhi for deficient, unprofessional and unethical service, in



which event you shall also be liable to pay the cost and consequences of further legal proceedings....”

It is the appellants’ case that they had full faith in the counsel for representing their case fully and for defending their interests, but the counsel has been found wanting and put the appellants in a position where they have been asked to pay damages of Rs.3,61,720/- with interest.

Issue notice, returnable on 26.08.2019.

NAJMI WAZIRI, J

JULY 25, 2019/kk